


UNION BUDGET 2018

**SYNOPSIS OF
PROPOSED
AMENDMENTS TO
DIRECT TAX**

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CORPORATE TAX

- ❑ **Tax Rate reduced from 30% to 25%** - for micro, small and medium enterprises having turnover between 50 crore to Rs 250 crores (turnover to be considered is for financial year 2016-17).
- ❑ **Education cess increased** – The “education cess on income tax” and “secondary and higher education cess on income tax” shall be discontinued. This totaled to 3% on the tax amount. They will be replaced by a new cess named “Health and education cess” at 4% of income tax.
- ❑ **Amalgamation** - Definition of “accumulated profits” for the purpose of deemed dividend widened in the cases of amalgamation to include the accumulated profits of the amalgamating company in the accumulated profits of the amalgamated company (with effect from financial year 2017-18)

CORPORATE TAX

- ❑ **Deemed dividend** - For an unlisted company, any loan or advance given to a shareholder having shareholding of 10% or above or to a concern in which such shareholder holds substantial interest or any payment made on behalf of or for the individual benefit of such shareholder is considered to be deemed dividend and taxed at the marginal rate in the hands of the recipient of such advance/loan/payment.

It is now proposed that the above deemed dividend be brought under the scope of dividend distribution tax to be taxed in the hands of the company advancing the loan and not in the hands of the recipient. Also, such dividend is proposed to be taxed at 30% (without grossing up) (applicable to transactions after 1 April 2018).

CORPORATE TAX

- ❑ **Compensation in connection to business** – Section 28 is restrictive in its scope as far as taxation of compensation is concerned and large amount of compensation receipts is out of the purview of taxation.

Hence it is proposed to state that “any” compensation received/receivable whether “revenue or capital”, in connection with the termination or the modification of the terms and conditions of any contract relating to business shall be taxable as business income.

OTHER PROPOSALS

- ❑ **Restriction on cash transactions** – There are at present no restrictions on payments made in cash by charitable or religious trusts or institutions. It is proposed that no deduction will be allowed for any expenditure made in cash above Rs 10,000 in a day in case of these entities.

The limit of Rs 20,000 was reduced to Rs 10,000 a day in the last budget for other entities.

- ❑ **Deduction in respect of income of Farm Producer Companies** – 100% deduction in respect of profit of Farm Producer Companies having a total turnover upto Rs 100 crore is proposed. This benefit is proposed for a period of five years from financial year 2018-19.

OTHER PROPOSALS

- ❑ **Incentive for employment generation** – The existing provision of allowing 30% additional deduction in respect of salary paid to new employees has been extended even in cases where condition of the minimum period of employment of a new employee is not met in the first year but the employee remains to be employed for the said period in the subsequent year.

- ❑ Also, in above, the period of minimum of 240 days of working was extended to apparel manufacturing industry earlier. This relaxation has been now proposed to be extended to leather and footwear companies.

OTHER PROPOSALS

- ❑ **Minimum Alternate Tax (MAT) for a company where corporate insolvency resolution process has been admitted** – It is proposed that the aggregate of loss brought forward and unabsorbed depreciation to be allowed to such companies as a deduction for the purpose of MAT calculation. Existing provision provides for a deduction of loss brought forward or unabsorbed depreciation whichever is lower.

It is also proposed to relax the provisions of section 79 in case of such companies which involves change in the beneficial owners of shares beyond permissible limit under section 79.

- ❑ **Scrutiny assessments** – It is proposed to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and

OTHER PROPOSALS

- the assessee, optimal utilization of the resources, and introduction of team-based assessment. The exceptions, modifications will be proposed in due course.
- **Requirement of PAN** – It is proposed that every entity (non individual) which enters into a financial transaction aggregating to INR 0.25 million or more during a fiscal year is required to obtain a PAN.

Further, so as to link such financial transactions with the natural persons through which such financial transaction will be executed, it is also proposed that Managing Director, Director, Partner, Trustee, Author, Founder, Karta, Chief Executive Officer, Principal Officer or Office Bearer or any person competent to act on behalf of above mentioned entities are required to obtain PAN.

TRANSFER PRICING & INTERNATIONAL TAXATION

- ❑ **Permanent Establishment (PE) definition** – it is recommended to make changes to the definition of a person acting in India as an agent on behalf of the non resident in order to constitute a permanent establishment in India. At present, the definition provides that if a person is habitually authorized to conclude contracts for the non resident in India, such an agent would constitute a PE. However, it is now proposed that an agent would include not only a person who habitually concludes contracts but also a person who plays a principal role leading to the conclusion of contracts.

Further, a PE is deemed not to exist when a place of business is engaged solely in certain activities such as maintenance of stocks of goods for storage, display, delivery or processing, purchasing of goods or merchandise, collection of information. This exclusion applies only when these activities are preparatory or auxiliary in relation to business as a whole. It is now recommended to introduce anti fragmentation rule to prevent the tax payer from resorting to fragmentation of functions which are otherwise a whole activity in order to avail the benefit of above exclusion.

TRANSFER PRICING & INTERNATIONAL TAXATION

- **Significant economic presence** – The definition of “business connection” in section 9 of the Act is proposed to be amended. It is proposed that “significant economic presence” in India shall also constitute “business connection”. Significant economic presence for this purpose would mean –
 - i) Any transaction in respect of any goods, services or property carried out by a non resident in India including provision of download of data or software in India if the aggregate of payments arising from such transactions during the year exceeds the prescribed amount.
 - ii) Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

It is further proposed that only so much of the income as is attributable to such transactions or activities shall be deemed to accrue or arise in India. The transactions or activities shall constitute significant economic presence in India, whether or not the non resident has a residence or place of business in India or renders services in India.

It is also clarified that unless corresponding modifications to PE rules are made in the DTAA's, the cross border business profits will continue to be taxed as per the existing treaty rules.

TRANSFER PRICING & INTERNATIONAL TAXATION

- ❑ **Country by Country reporting (CbCR)** – The time allowed for furnishing CbCR in case of parent entity or alternate reporting entity is proposed to be extended to twelve months from the end of the reporting accounting year.

Constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report in the latter's country or territory. The above time period is proposed for this purpose too.

WITHHOLDING TAX

- ❑ **Charitable Trusts/Institutions** – At present, the TDS (tax withholding) provisions were not applicable to these entities. However, the budget has proposed that charitable trusts/institutions will also be subject to the tax withholding rules and regulations. If the tax is not withheld or paid in time, 30% of the expenditure would be disallowed (this is similar to other entities).
- ❑ **TDS under section 194A on interest income** – The threshold for deduction of tax on interest income for senior citizens is proposed to be raised from Rs 10,000 to Rs 50,000.

START UPS

- ❑ **Start up definition** – The definition of start up has been expanded to provide that the benefit would be available if the start up is engaged in innovation, development, or improvement of products or processes or services or a scalable business model with a high potential of employment generation and wealth creation. Thus the requirement of startups being driven by technology or intellectual property has been removed.

INDIVIDUAL TAXATION

Compensation in connection to employment –

It is proposed that “any” compensation received/receivable whether “revenue or capital”, in connection with the termination or the modification of the terms and conditions of any contract relating to its employment shall be taxable as income from other sources.

Senior citizens –

i) Deduction in respect of payments towards annual premium on health insurance policy or preventive health check up or medical expense in respect of very senior citizen is currently at Rs 30,000. This is proposed to be raised to Rs 50,000.

INDIVIDUAL TAXATION

- ii) Deduction for medical treatment of specified diseases in respect of very senior citizens or senior citizens is currently up to Rs 80,000 and Rs 60,000 respectively. It is proposed to increase these limits to Rs 1,00,000 for senior and very senior citizens both.

- iii) **Deposit interest** – It is proposed to add a new section for allowing a deduction up to Rs 50,000 in respect of interest income from deposits held by senior citizens.

- Allowances withdrawn** - Transport allowance and reimbursement of medical expenses for salaried persons is proposed to be withdrawn.

INDIVIDUAL TAXATION

- ❑ **Standard deduction** - of Rs 40,000 or the amount of salary received, whichever is less, is proposed for salaried individuals.

- ❑ **Processing of income tax returns** – Existing provisions provides for an adjustment to be made to the total income or loss of an assessee for addition of income appearing in form 26AS or form 16A or form 16.

It is proposed that no adjustment to be made for the above for assessment year 2018-19 and going forward.

INDIVIDUAL TAXATION

- ❑ **National pension scheme** – The benefit of exemption with respect to 40% of the total amount received on closure or opting out is currently provided to employee subscribers. It is proposed to extend this benefit to non employee subscribers also from assessment year 2019-20 onwards.
- ❑ **Variation between stamp duty value and sale consideration** - At present, while taxing income from capital gains, business profits and income from other sources arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted. The difference is taxed as income both in the hands of the purchaser and the seller. It is proposed that where the variation is not more than five percent of the sale consideration, no adjustments will be made.

CAPITAL GAINS TAX

- ❑ **Long term capital gains** - arising from transfer of listed equity shares or units of equity oriented fund or units of business trusts were exempt from income tax. This exemption stands withdrawn.

10% tax rate has now been proposed on the above transfer and this will be levied on capital gains in excess of Rs 1,00,000. Indexation benefit will not be allowed.

Cost of acquisition for such holdings acquired before 1 Feb 2018 shall be the higher of –

a) actual cost of acquisition

b) lower of fair market value on 31 January 2018 or full value of consideration as accruing on transfer

(Applicable from financial year 2018-19)

CAPITAL GAINS TAX

- ❑ Due to the above amendment, long term capital gains on the above mentioned securities will become taxable in the hands of the foreign institutional investors also.
- ❑ **Trading in agricultural commodity derivatives** – It is proposed to provide that a transaction in respect of trading of agricultural commodity derivatives in a registered stock exchange or registered association will be treated as non speculative transaction as against the speculative transaction status as per existing provisions.



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SYNOPSIS OF PROPOSED AMENDMENTS TO DIRECT TAX

PROPOSED AMENDMENTS TO DIRECT TAX AT A GLANCE

Sr No	Section of the Act	Particulars
1	Section 115BAC	Proposed amendments to Individual Income Tax
2	Section 115-O	Removal of Dividend Distribution Tax
3	Section 44AB	Change in threshold limit for Tax Audit
4	Section 6	Changes in conditions to determine residential status
5	Various	Withholding tax/Tax deduction at source and changes to Tax collection at source provisions
6	Section 115 BAD and BAB	Concessional Rate
7	Section 80EEA	Deduction of interest on loan taken for certain housing property
8	Section 44AB, 92E and 115JB	Due dates
9	Other amendments	Other amendments

Section 115BAC- New Personal Taxation Regime

- ❑ Applicable for Individuals and HUF from assessment year beginning on or after 1 April 2021
- ❑ Option is available either to continue with existing rates with full deductions/exemptions or to opt for the new regime of reduced tax rates with no deductions/ exemptions
- ❑ The option needs to be exercised by an individual/HUF, having no business income, along with the return of income to be furnished as per section 139(1). Option to be exercised every year. Individual can freely opt in and out of scheme and accordingly the tax rates will apply. If return is late for filing, the normal tax rates as per current scheme will apply.
- ❑ An individual/HUF having business income, needs to exercise the option on the return of income for the assessment year 2021-22 and such option once exercised will continue to apply to subsequent assessment years. The person can withdraw the option only once later and thereafter cannot exercise the option again till the time he continues to have business income.
- ❑ Set off of losses or depreciation brought forward will not be allowed if these relate to any of the mentioned deductions/ exemptions as per next slide.
- ❑ Loss from house property will not be set off against the income under any other head

Section 115BAC- New Personal Taxation Regime

- ❑ **Most common deductions/exemptions not available under new tax system are listed below -**
 - any deduction under chapter VIA like 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80TTA, 80TTB, 80U etc. However, deduction under 80CCD(2) i.e. employer contribution in National Pension Scheme and 80JJAA i.e. new employment generation deduction is available.
 - Exemption of House Rent Allowance, Leave Travel Concession, some exemptions under section 10(14)
 - Standard deduction of Rs 50,000, entertainment allowance, profession tax (PT)
 - Interest on Self occupied property
 - Additional depreciation under section 32 (1)(ia)
 - Scientific research weighted deduction for payments to research association, company doing scientific research, university, college or other institution social science and statistical research, payment to National laboratory/ Indian Institute of Technology.
- Deduction from family pension under clause (ia) of section 57.
- Allowance for income of minor as contained in section 10(32)

Comparison Of Tax Rates in case of Individuals & HUF under new proposed system and the existing tax provisions

Taxable Income	New proposed tax Rate	Current Tax Rate
Up to 2,50,000	Nil	Nil
2,50,001 – 5,00,000	5%	5%
5,00,001 – 7,50,000	10%	20%
7,50,001 – 10,00,000	15%	20%
10,00,001 – 12,50,000	20%	30%
12,50,001 – 15,00,000	25%	30%
Above 15,00,000 *Surcharge and cess remain unchanged *Exemption limit for senior citizens remain unchanged	30%	30%

Section 115-O - Dividend Distribution Tax

❑ Abolish Section 115 O – Dividend Distribution Tax

At present dividend is taxed in hands of companies (effective tax rate 20.5553%) and exempt in hands of recipient. The dividends declared after 31 March 2020 will not be subjected to the dividend distribution tax. The burden of taxes on dividends is shifted to the recipients.

- ❑ Section 10(34) provides exemption with respect of dividends received by individuals except the dividends exceeding Rs 10 lakh. It is now proposed that the clause 34 will not apply to dividends received on or after 1 April 2020. Section 115BBDA will also be amended that the application of 10% tax rate on dividends exceeding Rs 10,00,000 for an assessee will be restricted to any dividends declared/distributed/ paid before 31 March 2020.
- ❑ Similar as above, the clause 35 of section 10 is proposed to be amended to restrict its application to income received by mutual fund unit holders till 31 March 2020. Hence, income received from units of mutual fund will not be exempt in the hands of an individual/HUF after this date.
- ❑ In consequence of above, foreign parent companies receiving dividend will be subject to tax deduction from the dividend, however, the credit of this tax paid in India will be available depending on the respective double tax avoidance agreement. Few agreements may give relief on exemption basis.

Section 44AB- Applicability Of Tax Audit

- As per current tax provisions, tax audit is applicable if the turnover is more than Rs one crore
- As per proposed amendment, Tax audit will be applicable if the turnover is more than Rs five crore if the aggregate of all amounts received by the assessee including amount received for sales/ gross receipts, in cash, does not exceed 5% of the aggregate of all amounts received.
- Also, to apply the extended threshold as above, the aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the said total payment.

Section 6 – Residential Status

- ❑ The two main conditions of residential status remain the same as below –
 1. 182 days or more in a year or
 2. 365 days or more in four preceding previous years and 60 days in the previous year

- ❑ The only change has been made for an individual who is Indian citizen or person of origin who is outside India and comes on a visit to India in any previous year. In such case, the condition of 60 days in point (2) above shall be read as 120 days (pre-budget, the provisions stated that 60 days shall be read as 182 days). The Indian citizens outside India will need to be more careful due to the reduction of number of days from 182 days to 120 days.

- ❑ As per Section 6(6), an individual or HUF shall be said to be “not ordinarily resident” of India in previous year , if-
 - the individual or manager of HUF has been a non resident in India in nine out of ten previous years preceding to that year. It is proposed that **instead of nine out of ten previous years preceding to that year, seven out of ten previous years preceding to that year** to be substituted. **The second alternate condition of 729 days or less in India in preceding 7 previous years is proposed to be omitted.**

- ❑ It is proposed that an individual being citizen of India, who is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature, he will be deemed to be the resident in India.

- ❑ The above amendments will apply for assessment year 2021-22 and subsequent years.

Withholding Tax (TDS)

❑ TDS under section 194LC on interest payment to Non Resident –

- Extension of period for concessional withholding rate of 5% for interest payment to non- resident in respect of moneys borrowed up to 30th June,2023
- It is also proposed to insert a new clause of 4% TDS on interest payable to a non resident in respect of monies borrowed in foreign currency from a source outside India by way of issue of any long term bond or rupee denominated bond on or after 1 April 2020 but before 1 July 2023 which is listed on recognized stock exchange located in any International Financial Services Centre.

❑ TDS under section 194LD interest payment to FII & QFIs –

- Extension of period for concessional withholding rate of 5% for interest payment to Foreign Institutional Investors (FII) & Qualified Foreign Investors (QFI) in respect of bonds issued by Indian companies and government securities up to 30th June,2023.

- ❑ TDS under section 194-O – New section is proposed to be inserted relating to tax deduction by e-commerce operators to e-commerce participants. TDS rate will be 1%. Threshold limit is Rs 5 lakh.

Withholding Tax (TDS)

- ❑ **TDS under section 194C** – Definition of work has been amended in this section to include “associate of customer” for material purchase for supplying a product. Which means in a contract of supply of product where the specifications are as per the customer and the raw material is purchased from the customer **or his associate**, the contract will attract 194C TDS. An associate is defined to mean, a person who is related to the customer in like manner, as is the person related to the assessee under the provisions of section 40A(2)(b).
- ❑ **TDS under section 194J** – TDS rate for fees for technical services (other than professional fees) is proposed to be reduced to 2% from 10%. TDS rate in other cases under this section including fees for professional services will continue to have the TDS rate of 10%.
- ❑ **TDS under section 194K** – This is a new section to be introduced. TDS at 10% is being made applicable on income in respect of units of Mutual Fund. Deduction is required only if the aggregate payment during the financial year exceeds Rs 5,000 in respect of one payee. TDS under this section is required to be deducted on the income in the nature of dividend only and no tax is required to be deducted on the income in nature of capital gains.

Tax collection at source (TCS)

- ❑ **TCS under section 206C** – It is proposed to be extended to a seller who receives any amount as consideration for sale of any goods of the value or aggregate value exceeding Rs 50 lakh rupees in any previous year . The seller shall at the time of receipt of such amount collect from the buyer a sum equal to 0.1 percent of the sale consideration exceeding Rs 50 lakh as income tax. Further, if the buyer does not furnish his PAN or Aadhar number to the seller, then the tax shall be collected at 1%.Only those seller whose total sales , gross receipts or turnover from business carried on by it exceed Rs 10 Crore during the financial year immediately preceding the financial year, shall liable to collect such TCS.
- ❑ **TCS under section 206C** – TCS provisions are proposed to be extended to remittances outside India for aggregate amounts more than Rs 7,00,000 in a financial year under the liberalised remittance scheme. The authorised dealer will collect a sum equal to 5% of the amount as tax at the time of debiting the amount. This will also be applicable for any tour package purchased from an overseas tour program package seller. 5% will be collected from the buyer of the tour package. In case of Non- PAN/Aadhaar rate shall be 10%.

Section 115BAD & BAB- Concessional Tax Rate

❑ Section 115BAD-

- As per current provisions, Co-operative societies are taxed @ 30%. Now it is proposed that Co-operative societies be given an option to be taxable @22% plus 10% surcharge plus 3% education cess. Also provisions of AMT will not be applicable in case the option is taken.

❑ Section 115 BAB:-

- Provisions of section 115BAB is applicable to domestic manufacturing companies started on or after 1st Oct 2019 but before 31st March 2023. It is proposed that “manufacturing” for the purpose of this clause will include the “business of generation of electricity”. Hence, the reduced rate of tax can be applied by these companies too.

Changes in Due Dates

- ❑ **Section 44AB** - The due date for filing the tax audit report is proposed as one month prior to the return filing date.
- ❑ **Section 92E** - The due date for filing the transfer pricing audit report under the current provisions is the same as the return filing due date. It is proposed that the due date for filing the transfer pricing reports be one month prior to the return filing due date. Hence, for FY 2019-20, the proposed due date is 31 October 2020.
- ❑ **Section 115JB** - The due date for filing form 29B for certification of book profit under current provisions is the same as the return filing due date. It is proposed that the due date for filing the form be one month prior to the return filing due date.
- ❑ **Section 139** – The return filing date for a company and a person (other than company) whose accounts are required to be audited and all partners of a firm whose accounts are required to be audited is proposed to be 31 October from AY 2020-21 . Current due date for these assesseees is 30 September.

Other Amendments

❑ **Section 80IAC** - Deduction under section 80IAC is available for eligible start ups for 100% of profits for three consecutive years out of seven years at the option of the assessee if turnover is up to Rs 25 Crore. It is proposed that the deduction be available for three consecutive assessment years out of **ten years** beginning from incorporation.

❑ **Capital Gains** - As per current provisions, the cost of long term capital asset acquired before 1 April 2001 is taken to be the cost of acquisition to the assessee or fair market value of the asset on that date at the option of the assessee. It is now proposed that in case of land or building, the fair market value of such asset as on 1 April 2001 shall not exceed the stamp duty value, wherever available. This will take effect from assessment year starting 1 April 2021.

❑ **Non resident companies** - It is proposed that the non resident companies whose total income consists of only royalty or technical fees shall not be required to file the return of income provided the tax deduction is done at rates not lower than the rates specified under the Act. This was applicable earlier only to non resident companies who had income in the nature of dividends or interest.

Other Amendments

- ❑ **80G (donations)** – The 80G approved institutions / funds will be required to submit data to the tax authorities as per the proposed amendments. It is proposed that the assessee's claim for 80G deduction shall be allowed on the basis of information relating to said donation furnished by the institution/ fund to the income tax authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time. This will take effect from 1 June 2020.
- ❑ **80GGA** – This relates to deduction in respect of donations for scientific research or rural development. It is proposed that any sum exceeding Rs 2,000 shall not be allowed under this section unless such sum is paid by any mode other than cash.
- ❑ **Section 203AA** – This section required the income tax authority to furnish form 26AS to every person from whose income, tax has been deducted. This section is proposed to be omitted. A new section 285BB is proposed to be inserted relating to annual information statement to be uploaded by the prescribed tax authority in the registered account of the assessee in such form and manner as prescribed. This will take effect from 1 June 2020.

Other Amendments

- ❑ **Section 80EEA** - As per this section, to take the benefit of interest deduction of Rs 1,50,000, loan sanctioned date must be during the period 1 April 2019 and 31 March 2020. It is proposed that the period be extended to before 31st March 2021. Other conditions under the section are unchanged.

- ❑ **Section 271AAD** – Penalty introduced for false entry in books of accounts or any entry being omitted from books of account. Penalty amount will be the aggregate of such entries. The false entries will include use or intention to use falsified/ forged documents such as false invoices or invoice in respect of supply or receipt of goods or services without such supply or receipt of goods or services. Penalty shall also be imposed on any other person who causes the assessee to make any false entry or omit any entry.

- ❑ **Employer Contributions** - As per current provisions, amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, shall be treated as perquisite to the extent it exceeds Rs 1,50,000. The provision is now proposed to be amended to provide that the amount or the aggregate amounts of any contributions made by the employer in respect of the assessee, to the account of the assessee, in a recognised provident fund, in National Pension Scheme and in an approved superannuation fund shall be treated as perquisite to the extent it exceeds Rs 7,50,000 in a previous year.

Other Amendments

- ❑ **Direct Tax Vivad Se Vishwas Scheme** - This has been introduced to reduce litigation in direct taxes. The benefits of the scheme can be taken by taxpayer whose cases appeals are pending at any level. This will benefit the Government as revenues will be generated timely and also the assessee as they would be saving of time, energy and resources by opting for this scheme. This is applicable to appeals which are pending with the Commissioner (Appeals), Income Tax Appellate Tribunal, High Court or Supreme Court as on 31 January 2020.
- ❑ **Section 9 - Income deemed to accrue or arise in India** - The source rules for 'significant economic presence' (SEP) of a non-resident in India which would constitute "business connection" in India, in respect of digital taxation, have been postponed to AY 2022-23.
- ❑ **Section 140A – Return by whom to be signed** - In case of a company, now return of income can be verified by managing director or where there is no managing director by any director of the company and besides the director, it is proposed to include any other person as may be prescribed by the board. Similar is the case for a limited liability partnership. This is applicable from 1 April 2020.



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